

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**PENSION BENEFIT GUARANTY
CORPORATION,**
1200 K Street, N.W.
Washington, D.C. 20005

Plaintiff,

vs.

DIMENSIONAL LETTERING, INC.,
as administrator of the Dimensional
Lettering, Inc. Pension Plan
10-03 44th Avenue
Long Island City, NY 11101

Defendant.

Case No. 1:19-cv-00744

**COMPLAINT FOR PLAN
TERMINATION AND TRUSTEESHIP**

COMPLAINT

This action arises under Title IV of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. §§ 1301-1461 (2012 & Supp. V 2017). Plaintiff, the Pension Benefit Guaranty Corporation (“PBGC”), files this Complaint pursuant to 29 U.S.C. §§ 1342(c) and 1348(a), seeking an order (a) terminating the Dimensional Lettering, Inc. Pension Plan (the “Pension Plan”), (b) appointing PBGC as statutory trustee of the Pension Plan, (c) establishing December 1, 2015, as the termination date for the Pension Plan, and (d) directing Dimensional Lettering, Inc. (“Dimensional”) and any other person or entity having possession, custody, or control of any records, assets, or other property of the Pension Plan, to transfer, convey, and deliver all such records, assets, and property to PBGC.

JURISDICTION AND VENUE

1. This Court has exclusive jurisdiction of this action pursuant to 29 U.S.C.

§§ 1303(e)(3) and 1342(c) and (f).

2. Venue properly lies in this Court under 29 U.S.C. §§ 1303(e)(2) and 1342(g).

PARTIES

3. Plaintiff, PBGC is a wholly owned United States government corporation established under 29 U.S.C. § 1302(a) to administer and enforce the defined benefit pension plan termination insurance program created by Title IV of ERISA. When an underfunded pension Plan terminates, PBGC provides the timely and uninterrupted payment of pension benefits to plan participants and their beneficiaries. 29 U.S.C. §§ 1302(a)(2), 1321, 1322.

4. Defendant, Dimensional is a New York corporation located at 10-03 44th Avenue, Long Island City, New York. Dimensional is the plan administrator of the Pension Plan within the meaning of 29 U.S.C. §§ 1301(a)(1) and 1002(16)(A).

THE PENSION PLAN

5. The Pension Plan is a single employer, defined benefit pension plan that is covered by Title IV of ERISA. *See* 29 U.S.C. § 1321(a).

6. Dimensional established the Pension Plan effective November 1, 1981.

7. As of December 31, 2015, PBGC estimates that the Pension Plan is underfunded by approximately \$1,163,209, and is owed unpaid minimum funding contributions of \$265,796. The Pension Plan has seventeen participants.

8. Dimensional is the contributing sponsor of the Pension Plan within the meaning of 29 U.S.C. § 1301(a)(13).

COMPANY BACKGROUND

9. Dimensional is a business that specializes in manufacturing interior signs and

displays for retailers.

10. On October 1, 2015, Dimensional applied to PBGC for a distress termination of the Pension Plan under 29 U.S.C. § 1341(c)(2)(B)(iii)(I). In that application, Dimensional asserted that it would be unable to pay its debts when due and continue in business unless the Pension Plan was terminated.

11. Dimensional represented to PBGC that on October 1, 2015, Dimensional provided a notice of intent to terminate the Pension Plan to each of the Pension Plan's participants. That notice stated that Dimensional was seeking to terminate the Pension Plan with a proposed termination date of December 1, 2015.

12. On information and belief, Dimensional will be ceasing its operations and winding down its business.

CAUSE OF ACTION

13. PBGC is authorized by 29 U.S.C. § 1342 to commence proceedings to terminate a pension plan whenever PBGC determines, among other things, that the plan has not met the minimum funding standard required under section 412 of the Internal Revenue Code, 29 U.S.C. § 1342(a)(1), or that the plan will be unable to pay benefits when due, 29 U.S.C. § 1342(a)(2).

14. After Dimensional applied for a distress termination of the Pension Plan, PBGC determined that the Pension Plan should be terminated under 29 U.S.C. § 1342. Specifically, PBGC has determined, pursuant to 29 U.S.C. § 1342(a)(1) and (a)(2), that the Pension Plan has not met the minimum funding standard required under section 412 of the Internal Revenue Code and that the Pension Plan will be unable to pay benefits when due. As of December 31, 2015, the Pension Plan had not received \$265,796 in minimum required contributions and was underfunded by \$1,163,209. PBGC has also determined that termination of the Pension Plan is

necessary to protect the interests of the Pension Plan's participants and that the Pension Plan's termination date should be December 31, 2015.

15. On July 2, 2018, in accordance with 29 U.S.C. § 1342(c), PBGC issued a Notice of Determination (the "Notice") to Dimensional, as plan administrator of the Pension Plan. The Notice states PBGC's determination that the Pension Plan has not met the minimum funding standard required under section 412 of the Internal Revenue Code, and that the Pension Plan will be unable to pay benefits when due. A copy of the Notice is attached as Exhibit 1.

16. To date, Dimensional's President, Perry Gambino, has refused, through counsel, to execute an agreement terminating the Pension Plan, establishing the Pension Plan's termination date as December 31, 2015, and appointing PBGC as trustee of the Pension Plan under 29 U.S.C. § 1342(c).

17. Pursuant to 29 U.S.C. § 1342(c), a district court may order the termination of a pension plan if necessary to protect the interests of participants, avoid any unreasonable deterioration of the financial condition of the plan, or avoid any unreasonable increase in liability to the PBGC insurance fund.

18. Termination of the Pension Plan is necessary to protect the interests of the Pension Plan's participants.

19. Pursuant to 29 U.S.C. § 1348(a)(4), a district court establishes the date of termination of a pension plan when PBGC and the plan administrator have not agreed on a termination date.

20. PBGC and Dimensional have not agreed on a date of plan termination for the Pension Plan.

21. December 31, 2015, should be established as the Pension Plan's termination date

pursuant to 29 U.S.C. § 1348(a)(4). In the notice of intent to terminate that Dimensional sent to the Pension Plan's participants, Dimensional proposed December 1, 2015, as the Pension Plan's termination date. Therefore, as of December 31, 2015, the Pension Plan's participants no longer had any justifiable expectation of the Pension Plan continuing.

20. Pursuant to 29 U.S.C. § 1342(c), a trustee for a pension plan shall be appointed by the court upon granting a decree of plan termination. Further, 29 U.S.C. § 1342(b) provides that PBGC "may request that it be appointed as trustee of a plan in any case."

21. PBGC is ready, willing, and able to serve as the statutory trustee of the Pension Plan.

22. Pursuant to 29 U.S.C. § 1342(d)(1), the statutory trustee of a pension plan is entitled to, among other things, "require the transfer of all (or any part) of the assets and records of the plan to [itself] as trustee."

REQUEST FOR RELIEF

WHEREFORE, PBGC requests that this Court grant judgment for PBGC and issue an order granting the following relief:

1. Adjudicating that the Pension Plan is terminated pursuant to 29 U.S.C. § 1342(c);
2. Appointing PBGC statutory trustee of the Pension Plan pursuant to 29 U.S.C. § 1342(c);
3. Establishing December 31, 2015, as the termination date of the Pension Plan pursuant to 29 U.S.C. § 1348(a)(4);
4. Directing Dimensional and any other person or entity having possession, custody, or control of any records, assets, or other property of the Pension Plan, to transfer, convey, and deliver all such records, assets, and property to PBGC as statutory trustee upon request under 29

U.S.C. § 1342(d)(1); and

5. Granting such other relief as the Court deems just and proper.

Dated: February 6, 2019

Respectfully submitted,

Washington, D.C.

/s/ Cassandra Burton Caverly

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